

Nov 7 2005

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMIUNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO: 00-6273-CR-HUCK

UNITED STATES OF AMERICA,

Plaintiff,

v

ARIEL HERNANDEZ,

Defendant.

**APPELLATE COUNSEL'S RESPONSE TO
REQUEST FOR ORDER TO TURN OVER
ALL "PAPERS, CDS AND RELEVANT DOCUMENTS"**

COMES NOW, Richard L. Rosenbaum, court appointed appellate counsel for Ariel Hernandez and responds to Ariel Hernandez's *pro se* Motion ordering appellate counsel Richard Rosenbaum to turn over all "papers, CDs and relevant documents" to defendant, Ariel A. Hernandez, so he may file a *pro se* 28 U.S.C. 2255 motion, and responds as follows:

1. Undersigned counsel was appointed pursuant to the Criminal Justice Act to represent Ariel Hernandez on appeal after he was sentenced to life imprisonment. The Judgment, Convictions and Sentences were affirmed in an unpublished opinion in *United States v. Hernandez* [unpublished]. Ariel Hernandez's Petition for Writ of Certiorari, filed by undersigned counsel, was denied in *Hernandez v. United States*, 125 S.Ct. 941; 160 L.Ed 2d 823 (2005).
2. On October 21, 2005, undersigned counsel received a copy of Ariel Hernandez's *pro se* Motion from the chambers of the Honorable Paul C. Huck.
3. Shortly thereafter, Hurricane Wilma devastated South Florida. Due to Hurricane Wilma hitting the South Florida on October 23, 2005, undersigned counsel's office was forced to be closed through October 31, 2005. Undersigned counsel likewise lost power at his residence until November 1, 2005. As a result, no review of the matters stored on

computer could be conducted and undersigned counsel has not been given access to the storage facility where parts of Ariel Hernandez' file are kept. To further exacerbate matters, undersigned counsel underwent emergency surgery in October, 2005 and is still under doctors' care.

4. Further, portions of the transcripts and records in this case have been turned over for counsel for Ariel Hernandez in *State v. Hernandez*, (Dade County, Florida), wherein the State is seeking imposition of a sentence of death as a result of the substantive murder which was charged as an act of the RICO conspiracy this case in Federal court below.
5. On November 1, 2005 the Supreme Court of Florida entered Administrative Order AOSC05-75 tolling the time for the filing of time periods applicable to the filing of matters such as responses to pleadings. Good cause exists for the filing of this Response.
6. Undersigned counsel is ready, willing and able, and in the process of forwarding "all papers, CDs and relevant documents to Defendant, Ariel Hernandez, in counsel's possession, at no cost to him.
7. Undersigned counsel shall forward to Ariel Hernandez his trial and sentencing transcripts on computer disk; CD-rom materials; DVD disks; notebooks and boxes full of materials; and miscellaneous transcripts and discovery matters relative to his conviction at his designated facility.
8. Although Ariel Hernandez believes that a "true and correct evidentiary hearing transcript" was never prepared surrounding the court's order supplementing the Record on Appeal, undersigned counsel shall turn over to Ariel Hernandez another copy of the transcript of the hearing conducted before this Honorable Court which was used to supplement the record on appeal. Said transcript is certified by the official court reporter as being true and correct. Ariel Hernandez believes the transcript contains material omissions.

9. As set forth above, Richard Rosenbaum remains ready, willing and able, and shall in the upcoming days forward all original documents directly to Ariel Hernandez. Copies of said documents shall not be kept by undersigned counsel, and all of the originals shall be released to the Defendant.

10. Based upon this response, and the fact that computer disks of the trial transcripts were forwarded to Ariel Hernandez on November 4, 2005, there is no need for any further action as to the issue of turning over "all papers, CDs and relevant documents."

WHEREFORE, undersigned counsel submits this Response to Ariel Hernandez' Motion.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished this **7th day of November, 2005** to AUSA Lisa Hirsch, Office of the U.S. Attorney, 99 NE 4th Street, Miami, FL 33132.

Respectfully Submitted,

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BY 

RICHARD L. ROSENBAUM

cc: Ariel Hernandez

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Richard L. Rosenbaum, would you like to file more documents? Yes No